Electronically FILED by Superior Court of California, County of Los Angeles on 05/06/2021 11:27 AM Sherri R. Carter, Executive Officer/Clerk of Court, by S. Bolden,Deputy Clerk

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FEE EXEMPT – GOV. CODE § 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

STEVE ONGELE, an individual Plaintiff, vs. CITY OF LOS ANGELES, a California public entity; and DOES 1 through 25, inclusive Defendants.	Case No.: 21STCV01724 **DEFENDANT CITY OF LOS ANGELES' ANSWER TO PLAINTIFF'S COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL** Assigned to Honorable Christopher Lui Department 76 Action Filed on January 15, 2021

TO THE HONORABLE COURT, PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

Defendant City of Los Angeles ("Defendant City") for itself and no other party, hereby answers the allegations contained within the Complaint for Damages ("Complaint") filed by Plaintiff STEVE ONGELE ("Plaintiff") pursuant to the provisions set forth under Sections 431.30 and 446 of the California Code of Civil Procedure, as follows:

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GENERAL DENIAL

Under the provisions of Sections 431.30(d) and (f) of the California Code of Civil Procedure, Defendant City denies generally and specifically each and every allegation contained in the Complaint and denies that Plaintiff has sustained any injury or loss by reason of any act or omission on the part of Defendant City, or the agents, servants, or employees of the City of Los Angeles, and denies that Plaintiff has been damaged in the amount alleged in the Complaint or in any other amount whatsoever.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

1. Plaintiff's Complaint, and each cause of action set forth therein, are barred in whole or in part in that Plaintiff fails to set forth facts sufficient to constitute a cause of action against this answering Defendant.

SECOND AFFIRMATIVE DEFENSE

(Statute of Limitations)

2. Plaintiff's Complaint, and each cause of action set forth therein, are barred in whole or in part in that the causes of action asserted in the Complaint are barred by the applicable statutes of limitations, including, but not limited to, California Code of Civil Procedure Section 340, 335.1 Cal. Gov. Code §§ 911.2, 12960 and 12965.

THIRD AFFIRMATIVE DEFENSE

(Laches)

3. Plaintiff's Complaint, and each cause of action set forth therein, are barred in whole or in part by the doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

(Failure to Exhaust Administrative Remedies)

4. Plaintiff's Complaint, and each cause of action set forth therein, are barred in whole or in part in that Plaintiff has failed to exhaust the necessary administrative and/or judicial remedies.

FIFTH AFFIRMATIVE DEFENSE

(Failure to Exhaust Internal Procedures)

5. Plaintiff's Complaint, and each cause of action set forth therein, are barred in whole or in part in that Plaintiff failed to exhaust the internal procedures that were available to resolve the claims alleged therein.

SIXTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

6. Plaintiff's Complaint, and each cause of action set forth therein, are barred in whole or in part in that Plaintiff failed to file the administrative or judicial complaint(s) within the time required by law, including Government Code Section 12965.

SEVENTH AFFIRMATIVE DEFENSE

(Uncertainty)

7. Plaintiff's Complaint, and each cause of action set forth therein, are barred in whole or in part in that Plaintiff's Complaint is uncertain and the basis for its causes of action cannot be ascertained from the allegations stated therein.

EIGHTH AFFIRMATIVE DEFENSE

(Immunity of Public Entity)

8. Plaintiff's Complaint, and each cause of action set forth therein, are barred in whole or in part by reason of this answering Defendant's immunity from liability under, *inter alia*, Cal. Gov. Code §§ 815, *et seq*., 815.2, 815.3, 818.2, 818.8, 820.2, 820.4, 820.6, 820.8, 821, 821.6, 822.2 and Civil Code §47.

NINTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

9. Plaintiff's Complaint, and each cause of action set forth therein, are barred in whole or in part in that Plaintiff has failed to mitigate any of the damages or injuries he claims to have suffered from the acts or conduct of this answering Defendant or their representatives.

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TENTH AFFIRMATIVE DEFENSE

(Waiver)

10. Plaintiff's Complaint, and each cause of action set forth therein, are barred in whole or in part in that Plaintiff has waived and/or relinquished the claims or causes of action being asserted in this action.

ELEVENTH AFFIRMATIVE DEFENSE

(Immunity for Discretionary Acts)

11. Plaintiff's Complaint, and each cause of action set forth therein, are barred in whole or in part in that neither a public entity nor a public employee is liable for any injury resulting from his/her act or omission which was the result of the exercise of the discretion vested in them pursuant to Cal. Gov. Code §§815.2 and 820.2.

TWELFTH AFFIRMATIVE DEFENSE

(Emotional Distress Barred by Workers' Compensation Act)

12. Plaintiff's Complaint, and each cause of action set forth therein, are barred to the extent that Plaintiff seeks recovery for emotional distress arising out of the normal course and scope of employment, because such claim is barred by the exclusivity provisions of the California Workers' Compensation Act and case interpreting those statutes.

THIRTEENTH AFFIRMATIVE DEFENSE

(Avoidable Consequences Doctrine)

13. Without admitting that Plaintiff has sustained any damages or detriment, or that the answering defendant is liable to Plaintiff in any manner whatsoever, this answering Defendant is informed and believes and thereon alleges that Plaintiff unreasonably failed to take advantage of preventative and corrective opportunities, thereby precluding and/or limiting Plaintiff's recovery, if any, and further, that this answering Defendant exercised reasonable care to preclude and correct the behavior complained of by Plaintiff, if any.

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FOURTEENTH AFFIRMATIVE DEFENSE

(Frivolous Claims)

14. Plaintiff's Complaint, and each cause of action set forth therein, are frivolous and known by Plaintiff to be frivolous and without foundation in fact or law. Defendant is informed and believes and thereon alleges that this lawsuit is being pursued in bad faith for vexatious reasons for the purpose of harassing Defendant. Accordingly, Defendant is entitled to attorney's fees and other appropriate costs and expenses.

FIFTEENTH AFFIRMATIVE DEFENSE

(Failure to Comply with City of Los Angeles Charter)

15. Plaintiff's Complaint, and each cause of action set forth therein, are barred to the extent they are based upon alleged unlawful termination of employment in that Plaintiff has failed to file an appropriate application pursuant to §1016(c) of the Los Angeles City Charter and an appropriate demand for reinstatement and claim for compensation under §1017 of the Los Angeles City Charter.

SIXTEENTH AFFIRMATIVE DEFENSE

(Comparative Fault)

16. The damages alleged were directly and proximately caused and contributed to by Plaintiff's negligence, and the extent of damages sustained, if any, should be reduced in proportion to the amount of said negligence.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Exercise of Management Discretion)

17. Any adverse actions taken against Plaintiff by Defendant, if any, were based upon legitimate non-discriminatory and non-retaliatory, reasons.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Privileged Conduct)

18. The complaint, and each cause of action set forth therein, fails in that any purported conduct of Defendant was privileged and Defendant was justified in engaging in such conduct.

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NINETEENTH AFFIRMATIVE DEFENSE

(Good Faith)

19. At all times mentioned, Defendant acted in good faith, and with a legitimate business reason.

TWENTIETH AFFIRMATIVE DEFENSE

(Constitutional Acts)

20. At all times mentioned, Defendant acted in accordance with the Constitution of the United States and the Constitution of the State of California and all state and local laws relative thereto.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Standing)

21. The action is barred for lack of standing to sue.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Unclean Hands)

22. Plaintiff's claims for relief are barred by Plaintiff's unclean hands.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Res Judicata)

23. Plaintiff's claims for relief are barred, in whole or in part by the doctrine of res judicata.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Collateral Estoppel)

24. Plaintiff's claims for relief are barred, in whole or in part, by the doctrine of collateral estoppel.

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PRAYER FOR RELIEF

WHEREFORE, Defendant prays as follows:

1. That Plaintiff takes nothing by way of this action;
2. That Plaintiff's entire action be dismissed with prejudice;
3. That Plaintiff's request for attorney's fees and/or costs be denied in their entirety;
4. That Defendant be awarded attorneys' fees incurred in this action pursuant to, *inter alia*, California Code of Civil Procedure §§ 128.5 and 128.7;
5. That Defendant recover costs incurred in this action; and
6. For such other and further relief as the Court deems just and proper.

Dated: May 6, 2021

MICHAEL N. FEUER City Attorney
KATHLEEN A. KENEALY, Chief Deputy City Attorney
SCOTT MARCUS, Senior Assistant City Attorney
ERIC BROWN, Managing Assistant City Attorney
DOUGLAS LYON, Deputy City Attorney
CHRISTOPHER CADENA, Deputy City Attorney

By: Douglas Lyon
DOUGLAS LYON
Deputy City Attorney
Attorneys for Defendant, CITY OF LOS ANGELES

PROOF OF SERVICE
STEVE ONGELE v. CITY OF LOS ANGELES; CASE NO. 21STCV01724

I, the undersigned, say: I am over the age of 18 years and not a party to the within action or proceeding. My business address is 700 City Hall East, 200 North Main Street, Los Angeles, California 90012.

On May 6, 2021, I served the foregoing documents described as: **DEFENDANT CITY OF LOS ANGELES' ANSWER TO PLAINTIFF'S COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL,** on all interested parties in this action by placing copies thereof enclosed in a sealed envelope addressed as follows:

Gregory W Smith, Esq. ***Attorneys for Plaintiff***
Diana Wang Wells, Esq.
Leila K.Al Faiz
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[X] **BY MAIL** – I am readily familiar with the business practice for collection and processing of correspondence for mailing. Under that practice, it is deposited with the United States Postal Service on that same day, at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one (1) day after the date of deposit for mailing in affidavit; and/ or

[**X**] **BY ELECTRONIC SERVICE**: Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

[ ] BY PERSONAL SERVICE – ( ) I delivered by hand, or (X) I caused to be delivered via messenger service, such envelope to the offices of the addressee with delivery time prior to 5:00 p.m. on the date specified above.

[ ] BY FACSIMILE TRANSMISSION - I caused the document to be transmitted to the offices of the addressee via facsimile machine at telephone number on the date and time specified on the Transmission Report. The document was sent by fax from telephone number **(213) 978-8216** and the transmission was reported complete and without error. A true copy of the Transmission Report is attached to the mailed or personal or both proof(s) of service.

[ ] BY OVERNIGHT COURIER - I deposited such envelope in a regularly maintained overnight courier parcel receptacle prior to the time listed thereon for pick-up. Hand delivery was guaranteed by the next business day.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 6, 2021 at Los Angeles, California.

Julie A Martinez
JULIE A MARTINEZ